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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7745 OF 2007

Bharat Yeshwant Pingle .. Petitioner

V/s

The Superintendent of Police,
Solapur & Ors. .. Respondents

Mr.S.G. Kudle for the petitioner.

Mr.V.A. Sonpal, A.G.P. for respondents no.1 to 4.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 18TH OCTOBER 2007

P.C. :

1. Rule. By consent, Rule is made returnable forthwith.

2. Heard counsel for the parties.

3. We need not go into the merit of the matter in view of the fact that the decision dated 3rd May 2006 appears to have been taken in the absence of the petitioner. The Tribunal has noted that on 16th March 2006, 24th March 2006 and 3rd March 2006, the petitioner and his counsel were absence. The Tribunal, therefore,

heard the matter and decided on merit hearing the respondents.

4. Mr.Kudle for the petitioner submitted that he was representing the petitioner in the Tribunal and he was under impression that the matter would not be heard as a copy of the reply was not served on him. He, therefore, remained absent as he was also busy in other court and he was under the impression that the matter would be heard only after a copy of the reply is served on him. He further states that he had not informed the petitioner of the dates and, therefore, the petitioner was also not aware of the dates and was not present in court. Mr.Kudle submitted that in his absence, the matter was heard on merits and decided against the petitioner. Mr.Kudle invites our attention to a decision of the Supreme Court in **Rafique v. Munshilal, reported in (1981) 2 SCC 788** and submits that on account of absence of the counsel, the petitioner should not suffer.

5. No doubt, this is a case in which the Tribunal had given reasonable opportunity to the petitioner inasmuch as it adjourned the matter on previous two dates. Nonetheless, the fact remains that the matter has been decided exparte without hearing the petitioner. Therefore, in view of the aforesaid decision of the

Supreme Court, we are inclined to set aside the impugned order and remand the matter back to the Tribunal for fresh hearing subject to payment of costs. We are inclined to impose the costs since in our view sufficient opportunity was given to the petitioner and the government must have incurred some expenditure as the matter was heard on the third date.

6. In view of the above, the writ petition is allowed. The order dated 3rd May 2006 passed in Original Application No.32 of 2006 is set aside and the matter is remanded back to the Tribunal for hearing afresh in accordance with law subject to payment of costs of Rs.1000/- to be paid to the Maharashtra Legal Aid Services Authority within two weeks from today.

7. Rule is made absolute as above.

(D.G. KARNIK, J.) (S.B. MHASE, J.)